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2011 IL App (3d) 090905-U

Order filed July 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TERRELL D. STANBACK, Defendant-Appellant.	) Appeal from the Circuit Court) of the 21st Judicial Circuit,) Kankakee County, Illinois,)) Appeal No. 3–09–0905) Circuit No. 07–CF–456)) Honorable) Kathy Bradshaw-Elliott,) Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's admission of hearsay and other criminal conduct evidence at the sentencing hearing, and the weight placed on the evidence, was proper. Defendant is entitled to apply a $5 per day presentence incarceration credit that eliminates the $200 DNA analysis fee.

¶ 2 Defendant, Terrell D. Stanback, pled guilty to home invasion (720 ILCS 5/12–11(a)(1) (West 2006)) and aggravated discharge of a firearm (720 ILCS 5/24–1.2(a)(3) (West 2006)). At the sentencing hearing, the State produced evidence that defendant may have been involved in

two other shootings. Defendant appeals, claiming that: (1) the trial court abused its discretion by allowing the prosecution, at the sentencing hearing, to present unreliable hearsay evidence that defendant had been involved in two shootings for which he had not been charged; and (2) the court should vacate the $200 deoxyribonucleic acid (DNA) analysis fee assessed on defendant because he had already been ordered to submit to DNA testing. Alternatively, defendant argues that the fee has been satisfied by the statutory $5 per day presentence incarceration credit. We eliminate the DNA analysis fee and otherwise affirm.

¶ 3 FACTS

¶ 4 On July 14, 2007, Kankakee police officers initiated a traffic stop on defendant's vehicle. Defendant fled from the officers in the vehicle and then on foot. During the chase, defendant fired a single shot from a firearm in the direction of the officers and then ran to a house, where he brandished the firearm and ordered a man into the residence. A standoff ensued during which defendant threatened the individuals inside the home. Eventually defendant surrendered. He was charged by indictment with several crimes including those of home invasion (720 ILCS 5/12–11(a)(1) (West 2006)) and aggravated discharge of a firearm (720 ILCS 5/24–1.2(a)(3) (West 2006)), to which he pled guilty.

¶ 5 During the sentencing hearing, the State called three witnesses. Officer Michael Suprenant testified to the events of July 14, 2007, pertaining to the chase with defendant and the home invasion. Officer Scott Monferdini testified about the events surrounding a different shooting that occurred on June 30, 2007. Monferdini testified that he was called to the scene of the shooting and recovered three .38-caliber shell casings.

¶ 6 Officer Earl Cote testified to the events surrounding a third shooting that occurred in the

early morning hours of July 14, 2007. Later that day, the victim, Jerome Lucius, while heavily medicated, told Cote that he was shot by a subject named Terrell. Hours after Cote received this information, he was called to the scene of the standoff with defendant. When he learned that defendant's name was Terrell, he thought that the cases may be related. Cote also testified that after defendant's arrest, he processed the crime scene in the instant case and found a firearm and a magazine loaded with .38-caliber ammunition. He further testified that the officers found a .38-caliber shell casing outside of the house.

¶ 7 The day after the standoff with defendant, Cote went back to Lucius with a photo lineup, and Lucius identified defendant as the individual who shot him. Lucius later gave Cote a statement regarding the shooting. After receiving the statement, Cote went to the location of the shooting and recovered a .38-caliber shell casing.

¶ 8 Cote later became aware of the June 30 shooting, and he sent the shell casings found at the locations of the June 30 and the two July 14 shootings, along with the firearm recovered after the standoff with defendant, to the State Police crime lab. Cote received documentation back from the crime lab that indicated the handgun was involved in all three shootings.

¶ 9 The trial court also received a presentence investigation report (PSI) prior to sentencing. The PSI indicated that defendant had a violent disposition as a child. It contained a long list of violent acts and demonstrated that defendant was unable to complete any past attempts at rehabilitation. The PSI also stated that defendant was unable to complete school and that he was suspended many times and eventually expelled.

¶ 10 The information contained in the PSI led the trial court to determine that defendant had learned nothing from his previous encounters with the law. The court noted that as defendant

aged he began to use guns as opposed to fists and threats. The PSI led the trial court to state that "although there has been a lot of evidence here about other incidents, quite frankly, I think the presentence investigation itself *** shows that *** there's not much chance of rehabilitation unless you completely change your ways."

¶ 11 The trial court relied on the PSI almost exclusively at sentencing. It mentioned the testimony of the three officers only once, saying, "I don't know if it's true you were running because of the previous shootings."

¶ 12 Defendant was sentenced to concurrent terms of imprisonment of 26 years for home invasion and 24 years for aggravated discharge of a firearm. Defendant was further ordered to submit to DNA analysis and pay a $200 DNA analysis fee. Defendant appeals from the sentencing.

¶ 13 ANALYSIS

¶ 14 Defendant first argues that the trial court abused its discretion when it allowed the prosecution, during sentencing, to present hearsay evidence relating to two shootings that defendant may have been involved in but for which he had not been charged. Defendant's sentence will not be reversed absent an abuse of discretion by the trial court. *People v. Cox*, 82 Ill. 2d 268 (1980).

¶ 15 It is well settled that differences exist in the evidentiary standards during the guilt-innocence phase of a trial and the sentencing phase, where the ordinary rules of evidence are relaxed. *People v. Harris*, 375 Ill. App. 3d 398 (2007). At sentencing, the trial court has broad discretionary power and can search anywhere within reasonable bounds for other facts that may serve to aggravate or mitigate the offense. *Id.* The only requirement for admission of evidence

in a sentencing hearing is that the evidence must be reliable and relevant as determined by the trial court in its sound discretion. *People v. Jett*, 294 Ill. App. 3d 822 (1998). Hearsay evidence is not *per se* inadmissible, and any objection to hearsay goes to the weight rather than the admissibility of evidence. *People v. Perez*, 108 Ill. 2d 70 (1985). A trial court may also consider other criminal conduct of the defendant for which there has been no prosecution or conviction. *People v. Jackson*, 149 Ill. 2d 540 (1992). However, such evidence should be presented by witnesses who can be confronted and cross-examined. *Id*. The State may prove other criminal conduct by testimony of an investigating officer. *Harris*, 375 Ill. App. 3d 398.

¶ 16 Even though the evidentiary standards are relaxed at sentencing, a sentencing court must exercise care to insure the accuracy of the information considered and to shield itself from what may be the prejudicial effect of improper materials. *People v. Williams*, 149 Ill. 2d 467 (1992). If it is shown that the procedure adopted by the sentencing court or the materials considered by it prejudiced the defendant, the resulting penalty will not be allowed to stand. *People v. Crews*, 38 Ill. 2d 331 (1967).

¶ 17 Here, evidence was presented at sentencing that sought to establish that defendant was involved in two shootings for which he was never charged. Evidence of the other shootings, presented by Officers Monferdini and Cote, consisted of statements by the victims of the shootings and a crime lab report indicating that shell casings found at the scene of the two shootings were from the same gun found at the scene of defendant's standoff with police.

¶ 18 We do not believe that the trial court abused its discretion by admitting the evidence. The evidence was offered by the State to show that defendant was engaged in other criminal conduct. This type of evidence is permissible at sentencing and may, as shown above, be proved by the

use of hearsay and by testimony from an investigating officer. Because this evidence was properly admitted, any objection to its use must go to the reliability of the evidence and the weight that the trial court placed on it.

¶ 19 From the trial court's comments at sentencing, it is clear that it did not place undue weight on the testimony of Officers Monferdini and Cote. The trial court relied almost exclusively on the PSI in determining defendant's sentence. Therefore, even if the evidence was unreliable, as defendant claims, defendant was not prejudiced by its admission.

¶ 20 Defendant next argues that the court should vacate the $200 DNA analysis fee because defendant had already been ordered to submit to DNA testing and assessed the fee. Recently, the supreme court held that a trial court can only order the taking, analysis, and indexing of a qualified offender's DNA, and the payment of the analysis fee, where the defendant is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 21 Here, defendant points to two prior convictions for which DNA samples should have been taken under operation of law. See 730 ILCS 5/5–4–3(a) (West 2004); 730 ILCS 5/5–4–3(a) (West 2006). We cannot determine from the record if the tests are in fact currently on file and cannot, therefore, resolve this issue on that basis. However, defendant is entitled to apply a $5 per day presentence incarceration credit towards the fee, thus eliminating its remaining balance. See *People v. Long*, 398 Ill. App. 3d 1028 (2010).

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we modify the DNA analysis fee to reflect a $5 per day presentence incarceration credit, thereby eliminating it. The judgment is otherwise affirmed.

¶ 24 Affirmed as modified.